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The Reagan Court: Turning Back the Clock

To Counter Recent Rulings by the Supreme Court, Members of Congress and Civil Rights Advocates Are Developing New Anti-Discrimination Legislation

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POLITICAL TRENDLETTER®

Perspective

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The Supreme Court Threatens Economic Empowerment

Economic advancement must continue to be high on the agenda of blacks and other minorities well into the 21st century. However, because of five recent U.S. Supreme Court decisions, they will have a longer row to hoe before they can achieve those advances.

Four of the High Court's decisions were rendered between June 5 and June 15 of this year, 10 days in which federal civil rights statutes barring employment discrimination enacted between 1866 and 1972 were literally rewritten by that body. With these decisions (*Wards Cove v. Atonio, Martin v. Wilks, Lorance v. AT&T Technologies,* and *Patterson v. McLean Credit Union*), the Court has seriously weakened the rights of minority and women workers by making it far more difficult and costly for them to pursue and win employment discrimination law suits under Title VII of the Civil Rights Act of 1964. A fifth Supreme Court decision, *City of Richmond v. J.A. Croson Co.*, rendered last January, threatens to undermine or eliminate minority business set-asides in state and local government procurement programs.

Taken together, these five decisions may be viewed as Ronald Reagan's revenge. They show that through his Supreme Court appointees the former president is succeeding in retirement at what he failed to accomplish while he was in office—namely, to turn back the clock on civil rights.

The *Croson* decision, rendered by judges appointed by Republican presidents, is especially jarring for three reasons. First, the Office of Minority Business Enterprise was established by President Richard Nixon as part of his policy to foster "black capitalism." This policy had received strong verbal support from President Gerald Ford and other Republican leaders. Second, set-asides were designed to help minorities gain a toehold in our capitalist economic system. And finally, anything that dilutes the effectiveness of minority businesses detracts from the ability of blacks to contribute to our economy.

Nevertheless, it is important to remember that the Court's ruling on *Croson* is not the final word on minority business set-asides. The fact that the Supreme Court did not require such programs to be stopped or suspended must be underscored. Furthermore, it is still possible to establish and justify these programs. There yet remains a chance to establish twin beach-heads in the fight for minority economic progress—first by protecting and refining threatened minority procurement programs, and second by employing direct political action. Federal political action includes the push for legislation to reverse the *Croson* decision, an approach currently under consideration.

Political pressure applied to local government can also have an impact. Mayors and legislators at all levels, both black and white, can influence policy initiatives needed to open procurement opportunities for minorities. Minority entrepreneurs, likewise, must forge a new consensus with political leaders of all stripes, in the spirit of reciprocity but with the implicit understanding that these leaders can be voted out of office.

There is so much at stake. Expanded minority businesses means expanded employment opportunities and, therefore, increased tax revenues from minority communities. Black leaders must rise to the challenge. They must summon their talents to preserve set-aside programs and thereby help to promote economic advancement, not only for the sake of minority communities, but to help our economy become more productive and competitive in the world market. ■

Eddie N. Williams

PRESIDENT

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The Reagan Court: Turning Back the Clock

To Counter Recent Rulings by the Supreme Court, Members of Congress and Civil Rights Advocates Are Developing New Legislation

by David C. Ruffin

This June, with alarming aggressiveness, the U.S. Supreme Court brushed aside hard-won civil rights victories, issuing four decisions that eviscerate Title VII of the Civil Rights Act of 1964 as a weapon against employment discrimination. The Court, dominated by a 5-to-4 conservative majority that includes three judges appointed by former President Ronald Reagan, has severely weakened civil rights laws that Congress has passed and prior Court decisions have affirmed over the course of 25 years.

The new decisions place greater burdens, of both time and cost, on plaintiffs who attempt to prove job discrimination. If permitted to stand, their long-term effect may be to restrict or even eliminate opportunities and reforms from which employees as well as employers have benefited.

Nevertheless, these recent rulings may yet be reversed by Congress. Rep. Augustus F. Hawkins (D-Calif.) and Sen. Edward M. Kennedy (D-Mass.) are drafting legislation which, if enacted, would overturn the High Court decisions. Hawkins and Kennedy chair the two congressional committees that have jurisdiction over Title VII and equal employment opportunity—the House Education and Labor Committee and the Senate Labor and Human Resources Committee. Summary analyses of the four key Supreme Court cases follow.

***Wards Cove Packing Co. v. Atonio*—June 5, 1989 (5-to-4).** This case involves a challenge originated in Alaska in 1974 by Alaskan native and Filipino workers who sued the Wards Cove Packing Co., a salmon cannery, for employment discrimination under Title VII of the Civil Rights Act of 1964. The plaintiffs used statistics to demonstrate that they were overrepresented in unskilled, lower-paying jobs in the canneries while white employees held most of the higher-paying white collar positions.

In *Wards Cove,* the Court has departed from earlier precedents, including its own 1971 landmark decision in *Griggs v. Duke Power Co.,* by diminishing the value of statistical evidence as proof that an employment practice has been discriminatory in its impact. Under *Griggs,* the employer bore the burden of demonstrating that any practice which had a "disparate impact" or had the effect of excluding minorities and women from being hired or promoted was truly required for business purposes.

The *Wards Cove* decision shifts the burden of proof most heavily onto employees. The Court has held that plaintiffs may not rely exclusively on statistics to show a historic pattern of racial imbalance. Plaintiffs must also isolate the specific aspects of an employment practice that are discriminatory. Although the employer must justify the practice once a plaintiff establishes a case of discrimination, the "burden of persuasion" remains with the plaintiff, who must offer more proof to counter the employer's claim that its employment practice has a justifiable business purpose.

***Martin v. Wilks*—June 12, 1989 (5-to-4).** This decision may ultimately lead to the reopening and relitigation of long-settled affirmative action plans agreed to by employers through consent decrees. The original *Martin* suit was filed in January 1974 against the City of Birmingham and Jefferson County, Alabama, on behalf of black municipal and county employees and applicants for employment in those jurisdictions. After years of litigation, including two trials which led to a finding of employment discrimination, affirmative action consent decrees were negotiated and approved by a federal district court in 1981. The decrees established a remedial program for hiring and promoting blacks that substantially increased black employment and mobility in the fire, police, and sanitation departments as well as other municipal agencies.

A group of white male Birmingham fire fighters who claimed to have been precluded from challenging the employment agreements filed a subsequent "reverse discrimination" challenge to the 1981 consent decrees in separate lawsuits. Lawyers for the black employees argued that these white fire fighters had received notice of the pending decrees and that they had already presented their opposition to the proposed affirmative action plans at a fairness hearing where they were overruled by a federal district judge. The lawyers also contended that since the hearing had occurred before the decrees were signed, the white fire fighters' lawsuits attacking the settlement after the fact were therefore not proper. But the Supreme Court has ruled that since the white fire fighters weren't formal legal parties in the original case, they could file suit against the decrees.

As a result of this decision, long setuled cases are now open to periodic challenge by those dissatisfied with their outcome, even if those persons had knowingly bypassed opportunities to intervene in the litigation. According to Stephen Spitz, an attorney with the Lawyers' Committee for Civil Rights Under Law who is representing the original

Mr. Ruffin is editor of *Focus* magazine.

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The Reagan Court

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plaintiffs, the *Martin* precedent opens the floodgates to even more attacks on consent decrees by non-parties. More importantly, it eliminates the finality of numerous standing civil-rights consent decrees.

As a consequence of this ruling, plaintiffs and defendants may be less likely to settle cases without costly and extensive litigation. At the same time, public and private employers will probably be more reluctant to agree to affirmative action plans because of increased fear of future "reverse discrimination" litigation and liability. "We used to say, 'It's not over 'til the fat lady sings,' but since the *Martin* ruling, she keeps singing and it's still not over," says Spitz.

***Lorance v. AT&T Technologies*—June 12, 1989 (5-to-3; Justice Sandra Day O'Connor did not participate).** On the same day the Court, in *Martin*, granted white men practically unrestricted opportunity to challenge consent decrees, in *Lorance* it severely limited the time frame during which discrimination charges may be brought against seniority systems. The decision, written by Justice Antonin Scalia, holds that a challenge to an intentionally discriminatory seniority policy that is not brought within 180 days of that policy's adoption is forever waived. Importantly, the 180-day period begins not when someone is discriminated against but when the seniority policy is established.

This ruling threatens to significantly undermine the protections of Title VII available to minorities and women. It will encourage unnecessary and premature lawsuits and discourage conciliation and cooperation by employers in resolving disputes over employment discrimination. Minorities and women will be induced to file suits against seniority systems regardless of whether they themselves have been or ever would be affected by the policies.

"One of the dangerous implications of the *Lorance* case is that it may have applications beyond seniority systems," says Barry Goldstein, who argued the case on behalf of the NAACP Legal Defense and Education Fund, Inc. Goldstein, now an attorney with the Oakland, California, law firm of Saperstein & Seligman which specializes in civil rights cases, adds, "Employees may find it necessary to make preemptive challenges against newly instituted employment examinations, physical requirements, or even retirement programs on the theory that they might be discriminatory in the future."

In his dissent from the *Lorance* decision, Justice Thurgood Marshall wrote: "The majority [of the Court today continues the process of immunizing seniority systems from the requirements of Title VII. ... Employees must now anticipate and initiate suits to prevent future adverse applications of a seniority system, no matter how speculative or unlikely these applications may be."

***Patterson v. McClean Credit Union*—June 15, 1989 (5-to-4).** In this decision, the Court eliminated the only effective remedy available to victims of racial harassment at the workplace for redress through the law. In 1972 Brenda Patterson, a black teller and file coordinator, sued her employer, the McClean Credit Union in Winston-Salem, North Carolina, for racial harassment under Section 1981 of Title 42 of the U.S. Code. This statute, enacted by Congress in 1866, grants to all persons "the same right to make and enforce contracts...as is enjoyed by white citizens." Patterson charged that her employer subjected her to racial slurs, gave her demeaning tasks that white workers did not have to perform, singled her out for criticism, and denied her training for higher-level jobs. She also charged that the Credit Union failed to promote her to intermediate accounting clerk, and then fired her in 1982, because of her race.

Previously, the Court had regarded cases similar to *Patterson* as within the scope of Section 1981. However, during the last term, the Court—on its own initiative and without the urging of the Reagan administration—ordered a reargument of the *Patterson* case to determine if its 1976 decision in *Runyon v. McCrary* should be overruled. *Runyon* held that Section 1981 prohibits racial discrimination in the making and enforcement of private contracts.

While the Court has not overruled its prior *Runyon* decision, it has severely limited the scope of Section 1981. Justice Anthony Kennedy, writing for the majority, concluded that since Section 1981 only applies to the "making" of a contract, it cannot be used to redress racial harassment that occurs after an employment contract has been signed. In the language of the ruling, "this type of conduct [racial harassment], reprehensible though it be if true, is not actionable under 1981, which covers only conduct at the initial formation of the contract...."

As a result of the *Patterson* decision, no meaningful remedy for on-the-job racial harassment remains—neither monetary awards for the pain and suffering of being discriminated against nor punitive damages to deter such conduct in the future.

A New Commitment to Civil Rights. Shortly after the Court issued its rulings, George Bush declared that he was studying the High Court's decisions and would make no comment on their impact. He added, however, that he would aggressively enforce existing civil rights laws. Bush's pronouncements provide little reassurance to civil rights advocates who view these decisions as severely weakening long-standing civil rights statutes. For this reason, a bipartisan group of congressmen and senators, led by Rep. Hawkins and Sen. Kennedy, have joined with officials from civil rights organizations to draft legislation designed to strengthen Title VII of the Civil Rights Act and Section 1981 of the U.S. Code. The omnibus legislation, which insiders on Capitol Hill believe will be introduced some time after Congress's August recess, is expected to contain provisions that will eliminate barriers newly imposed by the Court relative to pursuing and winning employment discrimination suits. The American people will be watching to see if Congress and indeed the Bush administration possess the will to recommit the government to guaranteeing civil rights protections for the nation's minorities and women. ■

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POLITICAL TRENDLETTER®

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- Changing ethnic make-up of students in northern Virginia prompts review of Fairfax county school board's "minority seat."
- Across the Nation looks at states that are expected to lose congressional seats after the 1990 Census due to reapportionment.

Prominent Economists Sound the Alarm

At a hearing on July 19 before the Congressional Joint Economic Committee on Capitol Hill, Yale economist and 1981 Nobel Prize winner JAMES TOBIN called on Congress and the Bush administration to make major public investments to reduce what he described as the nation's third deficit—"the low levels of public investment in people and economic infrastructure necessary to produce a productive work force and to support a competitive economy." Tobin presented the committee with a letter signed by 327 American economists, including five other Nobel laureates, which had been drafted by JEFF FAUX, president of the Washington-based Economic Policy Institute. "The deficiency of public investment," the letter states, "will have a crippling effect on America's future competitiveness."

The letter warns that if the U.S. is to achieve higher productivity, it must educate its children better, equip its workers with advanced skills, prevent drug abuse, and provide health care to more Americans. It also calls for rebuilding the nation's infrastructure by repairing bridges, expanding airports, and extending technological innovations to small and medium-sized businesses. These investment priorities, the economists note, have been ignored over the past eight years. Meanwhile, state and local governments have been unable to compensate for federal cutbacks with resources of their own. The economists add that while the U.S. lags behind both Germany and Japan in productivity, the governments of these two competitor nations spend more for non-defense programs, proportionally, than the U.S. does.

The federal government today is spending less per capita on education and worker training than it did during the 1970s. It is also investing less in highways, mass transit, and airports. The economists predict that in the long run the U.S. cannot eliminate the federal budget and trade deficits while maintaining its high living standards unless it also expands public investment. This is particularly significant for the senior population, since, as the letter states, "the present generation of workers will have to depend on a much smaller working population to support their retirement." The economists suggest that although at least $30 billion in new public spending is needed, it could be raised from savings in military programs and agricultural subsidies, as well as new taxes.

Tobin and his colleagues are not alone in their call for greater public investment. Such investment provided major themes for Rev. JESSE JACKSON'S 1988 presidential campaign. In recent months, the Children's Defense Fund in Washington, D.C., and the W.T. Grant Foundation have called for increased annual spending for children and youth. The National Education Association and the government's General Accounting Office both urge more support for education. And the Ford Foundation's recent report, "The Common Good," concludes that the U.S. should allocate about $29 billion a year for new spending in education, training, and health care. In their letter to Congress, the 327 economists warn that **"a decision to ignore needed investments today will inevitably result in ... declining prosperity and the need for even greater remedial spending in the future."**

White Minority Wants to Rewrite Rules

In western Mississippi, the small rural town of Friars Point, population 1,460, was thrust into the national spotlight recently when a small group of whites in the predominantly black town claimed their local election laws were discriminatory. Charging that the town's at-large system of electing aldermen excludes them from political participation (according to the 1980 Census they are 14.6 percent of the town's population), the white residents have petitioned for the establishment of a new electoral system with single-member districts. The petition, signed by about 20 of the town's 80 or 90 eligible white voters, was submitted to the five-member board of aldermen after white incumbent Alderman **CHARLES WILSON** lost his June 6 bid for reelection, causing the board to become all black for the first time in the town's history. Under the current at-large system, each voter votes to fill all the seats for aldermen by choosing from the full slate of candidates.

Ironically, it is blacks who have long demanded the elimination of at-large elections (e.g., in Pittsburgh, Pennsylvania; Springfield, Illinois; and cities across the South) on the grounds that such systems dilute black voting strength. In Friars Point, where blacks outnumber whites by more than eight to one, the petitioners argue that the system is responsible for Wilson's election loss. **"Why shouldn't we, as a white minority, have the same rights as the blacks have when they are in the minority?" asks JOHN YOUNT, a white accountant who presented the petition at the July 5 board meeting. The petitioners propose creating a ward system in which one alderman would be elected from each of four wards; the geographical boundaries would be drawn so as to ensure that at least one ward was 65 percent white. Under the plan, a fifth seat would remain at-large.**

Mayor JAMES WASHINGTON and members of the board disagree, however, with the assertion that the system is to blame for Alderman Wilson's loss. Up to the day before the deadline for candidates to declare that they were seeking office, no white had done so. Wilson, according to Mayor Washington, only registered for reelection on the deadline date—at the mayor's urging. "The white people didn't campaign for him," says Washington. "He didn't even campaign for himself." Wilson's passive campaign, coupled with an in-house election study by the board which showed that only half the eligible white voters turned out at the polls, has led blacks to suspect that the petitioners may have been planning to make the challenge well before the election. At the same time, all parties agree that if more whites had gone to the polls, Wilson would have won (he lost by two votes). Yount admits that voter apathy played a part. "The whites figured, 'Why vote? We can't make a difference anyway,'" he says. But he also adds, "If he [Wilson] had been reelected, no way would we have gone ahead with this plan [to petition]."

Although blacks are reluctant to view the present system as one that denies political rights to whites, they voted unanimously to consider the petitioners' plan and explore alternative election systems. Both Washington and Yount point out that any change in the present system would not go into effect until the next election in 1993, and that any new system would have to pass the Justice Department's review for compliance with Section 5 of the Voting Rights Act of 1965.

While agreeing to investigate alternatives to the present system, the town's black leaders are nevertheless skeptical about the feasibility of a ward system. Washington says that a population study, commissioned by the board and now being carried out by the North Delta Planning and Development District, will likely show the black population to be as high as 92 or 93 percent of the town's total. "There's no way we could do it [establish a ward system] from a geographical standpoint," Washington argues. "We couldn't have a ward with only 48 people in it just to guarantee a 65 percent white majority." Yount disagrees, arguing that since many of the whites in Friars Point are concentrated in one area, it should be possible to create a ward that is at least majority-white. A compromise solution is expected, since all players agree that it is of the utmost importance to maintain racial harmony in the community.

Black Clout on School Board Threatened by Shifting Demographics

The Fairfax County Board of Supervisors in Virginia recently appointed **ROBERT E. FRYE** to the county school board's at-large "minority seat." Frye, a black official at the U.S. Consumer Product Safety Commission, had occupied the school board seat from 1978 to 1985 as well. **The at-large minority seat has been held by a black since the position was created in 1972. This year, however, the appointment was made amid growing concern by representatives of other minority groups in the county over the seat's purpose and function. The 10-member school board, appointed by the county board of supervisors, is made up of eight officials chosen to represent their districts and two at-large seats, one of them to be filled by a minority.**

Created in response to charges made by blacks in 1971 that the school board system had been discriminatory, the seat's primary original purpose was to insure black representation; blacks were then the dominant minority group in the county, making up 3.3 percent of its student population. Since that time, the overall minority student population has risen from about four percent to 25 percent. Asian students (at 10.4 percent in 1988) have since surpassed blacks (at 9.3 percent in 1988) as the largest minority group. And the Hispanic student population has also grown dramatically, from less than one percent in 1970 to 4.8 percent in 1988.

In view of these changing demographics, many residents from other minority groups as well as board members have questioned whether the policy of appointing a black to the "minority seat" is appropriate. "Minorities do not equal blacks. You have to keep reminding them [the board] so that it becomes a matter of practice," says school board member Armando Rodriguez, who has been serving the Mount Vernon District since last year. Rodriguez, whose appointment meant that minorities in the county are no longer limited to a single voice on the school board, is the first Hispanic ever to sit on the board and the only minority ever to hold one of its eight district posts.

In response to the concerns, Frye asserts that he does represent all groups and believes his appointment was appropriate. He plans to expand his efforts to reach out to other minority groups and to work toward increasing their participation on county advisory boards and committees. Frye is aware that in maintaining the minority seat, the board of supervisors is not likely to aggressively seek more minority candidates for other school board seats. Nevertheless, he argues, the seat is too valuable to be eliminated. Frye stresses the importance of its at-large status, which offers the latitude to address issues of interest to minorities while also serving the county's school children as a whole. Speaking in reference to the county's poor minority performance in standardized testing, **Frye says, "I think that there would be a need for the seat until significant progress has been made on minority academic performance."**

And in the Stay-Tuned Department...

Retiring Police Chief May Try to Trade Badge for Mayor's Robes in D.C.

Retiring Washington, D.C., police chief MAURICE TURNER has switched from the Democratic to the Republican party in order, observers believe, to position himself for a run at the mayor's office next year. The switch will assure Turner GOP financial support and enable him to avoid a face-off in the primaries against still-popular three-term incumbent Mayor MARION BARRY, Jesse L. Jackson, or any of at least three other local Democratic politicians in a mayoral race that is already attracting national attention.

Turner's political conversion was announced by President Bush on July 27, just one day before Barry and more than 2,000 D.C. officials and well-wishers were to celebrate the police chief's retirement. The retirement dinner attracted a surprisingly large contingent of black Republicans, and also provided Barry with a platform for demonstrating his political mastery over Turner, who could become the GOP's mayoral standard bearer next year.

Turner now becomes the second prominent black Republican to make noises about running for mayor of Washington. He was preceded by **ART FLETCHER,** a businessman and formerly assistant secretary of labor in the Nixon administration. Fletcher has made it known that he might be interested in the mayor's job if he does not become chairman of the U.S. Civil Rights Commission, a position President **GEORGE BUSH** has promised him if and when a vacancy should occur.

Rep. Conyers Wants to Be Mayor of Detroit?

On July 24, black Congressman JOHN CONYERS JR. (D-Mich.) became eligible to run for mayor of Detroit against four-term incumbent COLEMAN A. YOUNG. Conyers filed petitions with enough names to put him on the ballot in the September 12 nonpartisan primary. Conyers' move has left both black and white politicos dumfounded as to his intentions. The 71-year-old Young, who recently conceded to a paternity suit, is widely viewed as both an immovable object and an irresistible force in the Motor City. Conyers, age 60, chairman of the House Government Operations Committee and a high-ranking member of the House Judiciary Committee as well, was one of a handful of black leaders who supported President Bush's nomination of William Lucas to the post of assistant attorney general for civil rights. However, Conyers withdrew his support of Lucas after the former Wayne County sheriff endorsed recent U.S. Supreme Court decisions widely viewed as anti-civil-rights.

. . . Stay tuned for TL updates of these political developments.

Dennis Hoyle, a research assistant at the Joint Center, was a contributing TL reporter/writer this month.

Across the Nation

In the April 1989 issue of *Focus*, TL looked at states expected to gain congressional seats as a result of reapportionment. In this issue, TL examines states expected to lose seats. According to Election Data Services, a Washington-based political consulting firm, states projected to lose include: Illinois, two seats; Michigan, two seats; New York, three seats; and Ohio, two seats.

ILLINOIS: Significant population losses in Chicago over the last decade may make the city a target for the elimination of at least one congressional district as the Illinois state legislature wrestles with the probability of dropping two house seats. **This may jeopardize the ability of three of the state's black members of Congress to hold on to their seats. Each of the three, CHARLES HAYES (1st South Side), GUS SAVAGE (2nd South Side, Harvey), and CARDISS COLLINS (7th Downtown, West Side), is elected from a district where the majority of the constituents are black.**

Black state legislators, though, do not expect to lose any ground to redistricting. "If there was ever a party-line issue, it's redistricting—it comes right down to Democrat versus Republican, and the Democrats control the legislature," says State Senator **EARLEAN COLLINS-GRANT**, chair of Illinois' Legislative Black Caucus.

With four-term incumbent Republican Governor JIM THOMPSON's surprise announcement on July 13 that he will not seek reelection in 1990, the Democrats, who control both houses of the legislature, could secure complete control over the redistricting process if they capture the governor's mansion. Furthermore, because blacks hold high posts in the legislative leadership, they are in a strong position to protect the districts of black Chicago representatives. Assistant majority leader Collins-Grant is the number-two person in the senate's Democratic hierarchy, and there are two black assistant majority leaders in the house as well.

The Black Caucus is prepared to go to the mat to achieve its ends. Collins-Grant says, "we're ready to go to court if necessary." That is precisely what State Senator **RICHARD NEWHOUSE** did after the 1980 Census in response to a redistricting plan that would have reduced black and Hispanic representation in Chicago. Newhouse won that fight.

MICHIGAN: Michigan faces the likely loss of two congressional seats. Because Detroit has experienced major population losses since 1980, the city's 1st District seat, held by John Conyers, and 13th District seat, held by GEORGE CROCKETT, may be vulnerable to redistricting. The two representatives are the state's only black congressmen. The legislature may consider redrawing district lines so they encompass more of the suburbs (which are predominantly white and largely Republican). Presently, the Democrats hold a strong 61-to-49 majority in the state house of representatives. But if the GOP maintains its narrow control in the state senate (20-to-18) through the 1990 elections, conflict is certain to arise over how the lines are drawn. One strong voice in the process will be that of two-term incumbent Democratic Governor JAMES BLANCHARD, who is expected to win reelection.

NEW YORK: New York State's legislators and both major political parties have their work cut out for them, as the state is projected to lose three congressional seats and could be one of the biggest state losers in the nation's reapportionment. The outcome may be a cause for concern among the state's four black U.S. representatives (from New York City), whose seats may be in jeopardy. Their districts have all lost large numbers of residents.

Even if none of the majority-black congressional districts is actually eliminated, remapping may make election more difficult for some black congressmen. For example, the 11th District (northern Brooklyn), represented by four-term black Congressman **EDOLPHUS TOWNS**, may experience a reduction in its black constituency. Redrawn in 1982 after the U.S. Justice Department rejected a plan to create a district with a larger Hispanic constituency, Towns' district has since undergone demographic shifts that may make major modifications unavoidable this time around.

The three other black congressmen who will also have their eyes on the district map are **CHARLES RANGEL**, now in his ninth term representing District 16 in Harlem, **MAJOR OWENS**, four-term congressman from the 12th District of central Brooklyn-Crown Heights, and two-term Congressman **FLOYD FLAKE.** Flake represents the diverse 6th District, covering Jamaica, southern Queens-Ozone Park, and Howard Beach (where a black man was killed during a highly publicized incident of white racial violence in 1986).

Democratic Governor MARIO CUOMO is considered a shoe-in to win his third term, an outcome that would guarantee his party the upper hand in redistricting. Party-line voting by Cuomo supporters for other statewide positions might enable the Democrats to regain control of the state senate, now dominated by the Republicans (34-to-27). "It's always been a close majority and there is concern from our standpoint," says **EDWARD LURIE**, executive director of the New York State Republican Party. "It's not out of the realm of possibility that we will lose the majority."

Black and Hispanic state legislators, however, are not relying solely on the benevolence of their colleagues in Albany to keep minority districts intact. Asked about the possibility of losing one or more black congressional seats, State Assemblyman AL VANN (D-Brooklyn), chair of the state's Black and Puerto Rican Caucus, responds, "I would hope that the Voting Rights Act would preclude that from happening." Vann believes the Caucus is in a strong position, both legally and politically, to resist erosion of minority representation.

OHIO: Two congressional seats are expected to be lost in the redistricting of Ohio. This may affect the 21st District seat, held by LOUIS STOKES of Cleveland, the state's only black congressman. Stokes has held the office since 1968, when the 21st District was redrawn by the courts after a redistricting battle he led in 1967. Gubernatorial and state legislative election campaign results will have a major impact on where the lines are drawn. **Democrats now have a comfortable 59-to-49 majority in the state house of representatives, while Republicans hold a 19-to-14 lead in the senate. The governor's seat will be up for grabs.**

Much is at stake in the election outcome. If divided rule in the state government continues, the party that gains the governor's mansion will go into the reapportionment process with the most leverage. Democratic Governor RICHARD CELESTE's second term is up in 1991 and state law prohibits him from running for a third term. Observers expect a lively governor's race, with Ohio Secretary of State ANTHONY J. CELEBREZZE JR., who has also served as Ohio attorney general, considered to be the strongest Democratic candidate. His Republican opponent in the general election is likely to be either GEORGE VOINOVICH, mayor of Cleveland, or ROBERT A. TAFT II, Hamilton County Commissioner (Cincinnati). Taft, whose great-grandfather was President **WILLIAM HOWARD TAFT** was defeated four years ago when he ran for lieutenant governor but is expected to run a strong campaign.

The 1990 Census: Counting Everybody

Experts and Activists at a JCPS Conference Consider Ways to Address the Anticipated Census Undercount of Blacks

by Joyce Allen

Every ten years, the Census Bureau of the Department of Commerce conducts a national census of the U.S. population. By April 1 of next year, designated as Census Day, millions of Americans will have completed 1990 Census questionnaires. However, a disproportionate number of blacks and other minorities will go uncounted because they will not have filled out their forms, in part out of suspicion that the information will be misused to their detriment. The resulting "undercount" is likely, as in the past, to place minority communities at a disadvantage.

An accurate census is vital to the political and economic interests of minorities, because the census is used to reapportion seats in the U.S. House of Representatives and state legislatures and to allocate billions of dollars from government grant programs. Moreover, census data are used by policymakers to determine where to locate hospitals, schools, day care and senior citizen centers, and other vital facilities.

Last February, the Joint Center for Political Studies convened a day-long conference of more than 70 researchers, policymakers, community leaders, and Census Bureau officials to address the census undercount and its implications for minorities. The conferees examined the continuing problem of the undercount of blacks and discussed the outreach steps the Census Bureau plans to take to increase black participation. But many black leaders and statisticians have concluded that the undercount of blacks will still be significant despite these steps, and they are calling for statistical adjustments in the 1990 Census to compensate for it.

The Missing Black Population

Undercounting the population is not a new problem; it has plagued the government since the first census was taken in 1790. Today the Census Bureau relies on demographic analysis to estimate the size of the undercount and the characteristics of those people who have been missed. The process entails comparing census counts with estimates of the population based on recorded births, deaths, immigration, and emigration, as well as other records. If these estimates exceed the actual census counts, the population has been undercounted. In a similar fashion, the Bureau's Post-Enumeration Program matches the census survey with other government surveys to find discrepancies. (This is how the Bureau determines that there has been an undercount. Just what to do about the undercount is a matter of considerable debate, as we shall see later.)

According to the Bureau, the 1980 Census missed approximately 3.2 million people, an undercount that was spread unevenly across the population. Blacks comprised the largest group missed by the census and were more likely than those in the whites-and-other-races category to be undercounted. In fact, the proportion made up by blacks of all those undercounted has been growing steadily over the last five decades, from 19 percent in 1940 to 53 percent in 1980. The Bureau estimates that in 1980, 1.7 million blacks (almost six percent of the total black population) were not counted. This is equivalent to the combined populations of the cities of Baltimore, Atlanta, and St. Louis. By contrast, less than one percent of the whites-and-other-races population were not counted.

At the Joint Center's conference, Coppin State College professor Jerusa Wilson, a former visiting research psychologist at the Census Bureau, noted that males make up the overwhelming majority (73 percent) of undercounted blacks. In his study, "Reducing the Undercount of Black Male Persons and Young Black Children in the 1990 Decennial Census," Wilson reports that the Census Bureau estimates that nine percent of all black males were not counted in 1980, compared to three percent of black females. The estimated undercount for black men between 35 and 54 years of age ranged from 15 to 20 percent. The undercount rates for young black children (under five years of age) were estimated at 10 percent for boys and nine percent for girls.

Wilson cited the following reasons for the severe undercounting of black men: lack of awareness about the census and its purposes; mistrust of government, including the belief that information would not be kept confidential; and a concern that the information would be used to interfere with family incomes from welfare or would lead to eviction from public housing units. Among the black men reluctant to participate in the census, he further argued, are fathers

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Ms. Allen is an economist and a senior research associate at the Joint Center.

The 1990 Census

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who fear that the information would be used against them in child support cases and men involved in illegal activities.

Census Bureau's Outreach Plans

The Census Bureau is developing new strategies to reduce the undercount, both by improving the way the census is conducted and by promoting greater participation, according to Marshall Turner, chief of the Bureau's 1990 Census Redistricting Data Office, and Sam Johnson, coordinator of the Bureau's National Services Program. In 1988, a dress rehearsal of the 1990 Census was conducted in three locations to refine procedures under census-like conditions. One of the sites, St. Louis, was typical of an urban area with a large concentration of blacks.

In the upcoming census, the Bureau will make a concerted effort to use local residents as census enumerators, particularly in counting tenants in public housing units and the homeless living in shelters, abandoned buildings, and parks. The Bureau will also urge local government officials to take an active role by reviewing the Bureau's counts of housing units in each block and establishing Complete Count Committees to help improve awareness about the census.

In addition, the 1990 Census will be promoted heavily on television and radio and in the newspapers. Minority-owned advertising agencies have been hired to tailor public service announcements to black, Hispanic, and Asian populations. By contrast, a single advertising agency developed all the national ads for the 1980 Census. Moreover, the Census Bureau has started a number of programs (such as the Black Church Partnership Project, Public Housing Initiative, and National Head Start Initiative) to promote the census in communities where the undercount has historically been large.

Other outreach efforts include the Census Awareness and Products Program (CAPP), in which Census Bureau specialists make presentations at meetings and conferences to explain the importance of the census and the different initiatives that are in place to help reduce the undercount.

Debate Over Adjusting the Count

Even the best outreach efforts of the Bureau, some argue, may be insufficient to avert a serious undercount of blacks. Various cities, states, and public-interest civic organizations are demanding that the Census Bureau go one step further—adjusting the actual count using statistical methods.

The Department of Commerce announced in 1987 that the government would not adjust the results of the 1990 Census. In response, a group of cities (including Chicago, Houston, Los Angeles, and New York) and interest groups (including the NAACP and the League of United Latin American Citizens), together with the states of New York and California, filed a lawsuit last year against the Department of Commerce with the Federal District Court in Brooklyn to require the government to statistically adjust the census results to compensate for the undercount. The lawsuit was settled on July 17 with an agreement that after the Bureau conducts the census it will take a post-enumeration survey of 150,000 homes in July 1990, which could serve as the basis for a statistical adjustment. An independent, eight-member panel of experts will advise the Secretary of Commerce as to whether an adjustment is needed. However, the Secretary would not be bound by their recommendations.

At the Joint Center conference, Dr. Barbara Bailar, executive director of the American Statistical Association, added her voice to those favoring statistical adjustment. She stated that there is a critical need for such an adjustment and that the consensus among statistical scholars and professionals is that one must be made. Bailar, formerly the associate director for statistical standards and methodology at the Census Bureau, asserted that since 1980 the Bureau has made improvements in its research of the undercount which would make adjustment of the 1990 Census feasible. She pointed out that corrections and adjustments which rely on statistical methods are already being made in the census. She cautioned, however, that a statistical adjustment would not completely eliminate the undercount though it would help alleviate the problem.

Jacob Siegel, senior research scholar at Georgetown University's Center for Population Research, offered the Joint Center conference some arguments against adjusting for the undercount. In the first instance, there is skepticism as to whether it is technically feasible to adjust census numbers and whether the Bureau would have the time to adjust the numbers and meet legal deadlines for delivering apportionment counts to the President by December 31, 1990, and redistricting counts to all states by April 1, 1991. Siegel also submitted that an adjustment could affect the public's cooperation and participation in the census if they knew that the count would be statistically adjusted later anyway.

A Call to Action

Clearly, it is imperative that blacks take an active role in the 1990 census. Dr. Billy Tidwell, director of research at the National Urban League, asserted at the conference that blacks have a big stake in helping to minimize an undercount. (See "What the Census Means in Money and Power" in this issue of *Focus*.)

Tidwell urges black organizations, community leaders, and elected officials to coordinate efforts to educate the black community about the importance of the census and to help motivate blacks to participate in the process. And while he applauds the Census Bureau's plans to expand its outreach efforts, he maintains that the black community must make sure that the Bureau faithfully executes its plans and that the community must call attention to any observed deficiencies in implementation. ■

What the Census Means in Money and Power

Cities and States Stand to Lose Tens of Millions of Dollars and Legislative Representation If Minorities Are Seriously Undercounted in the 1990 Census

by Linda F. Williams

Does your vote count as much as the next person's? Does your city get all the federal funds it really deserves? The answers to these questions will depend in part on whether you and others in your community participate in the decennial census count next year. Every individual who completes a census form in April 1990 and is counted in the census will help ensure that the distribution of federal and state funds to some 39,000 local governments is equitable and fair.

The impact of the census has already been proven. On the positive side: the dramatic increase in the Hispanic population documented in the 1980 Census served as the foundation for major increases in Hispanic congressional representation. After census-based reapportionment and redistricting in 1981, eight congressional districts emerged with constituencies that were at least 50 percent Hispanic. Voters in all but two of these districts went on to elect or reelect a Hispanic at some point in the 1980s. The number of Hispanic congressmen increased from five in 1980 to nine in 1982. There are currently 11 Hispanic members of the House of Representatives.

On the negative side: the generally incomplete tally of minorities, particularly among urban residents, has led to significant losses of federal and state grants to cities with large minority populations, such as Detroit, New York, Los Angeles, Chicago, and Baltimore. Big-city mayors as diverse as Coleman Young of Detroit and Ed Koch of New York have complained vigorously about the millions of dollars in aid lost to their cities because of the census undercount.

The city of Baltimore is a good example of how the undercount can affect public funding. Baltimore officials estimate that 29,000 residents of the city were not counted in the 1980 Census. As a result, roughly $232 million in federal funds which the city would have qualified for during the last nine years never arrived. In practical terms, this meant that Baltimore did not get its proper share of federal and state programs for education and training, job creation, community development, public housing, and many other programs from funds allocated on the basis of population.

Other cities and states also stand to lose revenues if the 1990 Census undercount is significant and unadjusted. Among them are Chicago and Los Angeles, which could each experience a shortfall of more than $100 million over the next decade, and Texas, which could lose at least $300 million if large numbers of citizens are missed. All told, Census Bureau analysts have identified 60 federal programs, from drug rehabilitation services to public education, that distribute funds through formula grants based in whole or in part on population size—and such funds totalled $73 billion to all states in 1988 alone.

The Census and Political Power for Minorities

Unfortunately, many Americans view the census as a mundane activity that has little impact on their lives other than as an infringement of their privacy. It is clear, however, that census results have significant implications for the lives of all U.S. citizens, and particularly for blacks and other minorities. In addition to determining which states will gain or lose congressional seats, the census results determine the boundaries of thousands of state, county, and municipal legislative districts as well as congressional districts. Legislative district boundaries—and therefore the make-up of the people who live within them—often determine the background and ethnicity of the candidates elected as representatives. Therefore, whether minorities will be represented by the people of their choice in the next decade will be greatly influenced by the redistricting process, beginning with the census.

Though the 1990 Census data will initially be used to reapportion the number of Congressional seats allotted to each state, the redrawing of district maps within each state will be determined by a more complex political process. Generally, this will be governed by state legislators. At the same time as congressional, state, and local legislative election districts are redrawn, other governmental districts, such as those applicable to the election of judicial offices and education boards, will also be reconfigured.

Ms. Williams is an associate director of research at the Joint Center.

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What the Census Means

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Blacks have an enormous stake in this process. A look back at 1981 redistricting after the 1980 Census reveals heavy increases in the number of black elected officials. At the congressional level, the most important advances were the creation, as a result of litigation, of two additional majority-black congressional districts. These new districts eventually resulted in the election of two black congressmen: Mike Espy (Mississippi's 2nd district) and John Lewis (Georgia's 5th district). In addition, after most redistricting plans were adopted in 1982, the number of state legislative seats held by blacks shot up by 42—a historic single-year increase. Civil-rights litigation that followed the 1980 Census eventually led to the elimination of discriminatory multimember districts in favor of single-member districts in several Southern states. As a result, the number of black state legislators in Virginia, North Carolina, Florida, and the South Carolina state senate nearly tripled between 1980 and 1989, the cumulative total growing from 14 to 41 black members.

Activism for Fair Redistricting

If blacks and other minorities are more adequately counted and better organized in 1990, they may experience even greater gains in legislative representation than those brought about by the last redistricting process. First, black leaders and organizations must strongly encourage their constituents to participate in the census to ensure a full count. Second, blacks and other minorities should begin *now* to form redistricting coalitions. Ideally, such coalitions should include community activists, voter registration groups, "good government" style public-interest organizations (such as Common Cause and the League of Women Voters), labor unions, and state legislative leaders—especially members of redistricting committees.

Activists involved in redistricting should also elicit the support of technical experts such as demographers, political scientists, and voting rights litigators. Groups should be prepared to participate in redistricting hearings, to draw their own plans, to react to the plans of others, and to engage in litigation when necessary.

During the redistricting process, black plaintiffs in several states challenged redistricting plans that diluted the voting strength of black voters. Their challenges bore fruit. As a result of these suits, new districts in Georgia, Mississippi, and Louisiana were created where blacks now constitute majority constituencies.

The stakes are high. If future federal dollars supporting vital social programs are to be fairly allocated and black citizens are to be adequately represented in Congress and other legislative bodies, black leaders and groups must act now. With the census less than a year away, there is much planning, organizing, and coalition building to do. ■

National Council of Negro Women Black Family Reunion Celebration 1989

In the spring of 1986, Dr. Dorothy I. Height, president of the National Council of Negro Women, conceived of an event that would call attention to all that is good in the black family—its historic and cultural strengths.

Today, the event is viewed as the most significant family movement in black America since the mid-1960s. With a program that combines service, information, and entertainment with workshops, issue forums, exhibits, and health examinations, the Black Family Reunion Celebration aims to unify the community for constructive action as it confronts the national problems of education, drug abuse, teen pregnancy, health care, and joblessness—all concerns that matter deeply to the black family today.

"Catch the Family Spirit"
Cincinnati, Ohio, August 18-20
Washington, D.C., September 8-10

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